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Paper 32  
REDECLARED 28 September 2011

UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES

Patent Interference No. 105,838 (RT)

PURDUE RESEARCH FOUNDATION,  
Stephen F. Badylak, Robert S. Tullis,  
Emily Cotran ex rel. Kristina Lindberg (deceased),  
Joanne Watson ex rel. Alan R. Spievack (deceased)  
and Cook Biotech Incorporated  
(10/228,927 and 12/053,383),  
Junior Party,

v.

ACELL, INC.  
(10/337,152; US 6,576,265 C1 and US 6,579,538 B1),  
Senior Party.

REDECLARATION

Bd.R. 203(c)

By RICHARD TORCZON, *Administrative Patent Judge*.

A. CONFERENCE CALL

Yesterday the parties initiated a conference call seeking clarification about the counts and the claims. Paul Hunt, Rebecca Ball, Richard Lazarus and Christopher Brown appeared for the junior party (Purdue). Len

Mitchard, Mary Wilson and Ronda Moore appeared for the senior party (ACell). Purdue also requested additional time to address any changes.

**B. REDECLARATION OF INTERFERENCE**

The interference is redeclared to correct an error in original count 3 and to reconsider claims designated as corresponding to count 2.

Revised count 3

Count 3 should read "The method of '265 claim 3."

Revised claims corresponding to count 2

Arguably, decisive proofs for count 2 or count 3 would render claims corresponding to count 1 unpatentable. The original declaration had including the claims corresponding to count 1, but not count 3, as corresponding to count 2. Since it seems unlikely that anyone's proofs for count 2 will be earlier than their proofs for count 1, correspondence is revised to keep the claim separate. This question may be revisited, however, during the conference call to set dates.

The claims corresponding to count 2 are:

Purdue	10/228,927	57-84
	12/053,383	none
ACell	10/337,152	none
	6,576,265	none
	6,579,538	all

The interrelationship of the claims and the counts in this interference is fairly complex. If the parties can agree on a better way to structure the interference (consistent with the law of priority), the board would consider such a proposal at the conference call to set dates.

C. RESCHEDULED MOTIONS LIST DUE DATE AND  
CONFERENCE CALL TO SET DATES

The telephone conference call to set dates for action in this contested case is rescheduled for **10 a.m. (Eastern) on 26 October 2011**. (The Board will initiate the call.)

No later than **24 October 2011**, each party shall file and serve (SO ¶¶ 10.1 & 105) a list of the motions (Bd.R. 120; Bd.R. 204; SO ¶¶ 104.2.1, 120 & 204) the party intends to file.

cc:

Paul Hunt and Rebecca L. Ball, BARNES & THORNBURG LLP, of Indianapolis, Indiana; Richard Lazaraus, BARNES & THORNBURG LLP, of Washington, D.C.; Elizabeth Hart-Wells, PURDUE RESEARCH FOUNDATION, of West Lafayette, Indiana; and Christopher A. Brown and Kenneth A. Gandy, WOODARD, EMHARDT, MORIARTY, MCNETT & HENRY LLP, of Indianapolis, Indiana.

Leonard C. Mitchard and Mary J. Wilson, NIXON & VANDERHYE, of Arlington, Virginia, and Ronda P. Moore, BURNS & LEVINSON, LLP, of Boston, Massachusetts.